

APPEAL NO. 022084
FILED OCTOBER 2, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on February 21, 2002. The hearing officer resolved the two disputed issues by determining that the respondent (claimant) did not sustain a compensable injury on _____, and that he did not thereafter have disability. At the hearing, the appellant (attorney) introduced documentary evidence and called two witnesses. At the conclusion of the hearing, the hearing officer asked if he wanted to make a record concerning his attorney's fees and the attorney responded, "not at this time." The hearing officer then suggested that the attorney engage a "Web-assisted attorney's fee processing system" and the attorney indicated he would look into it. A Texas Workers' Compensation Commission (Commission) attorney fee processing system log note (log note) states that no justification text was provided for review and therefore the request for attorney's fees for hours which exceeded the Commission's Guidelines for Legal Services (the Guidelines) were denied. See Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE §152.4 (Rule 152.4). The hearing officer issued a Commission Order For Attorney's Fees (the Order) on June 21, 2002. The Order approved requested expenses in the amount of \$1.66. The Order also approved \$1959.16 of the attorney's fees request of \$4314.91, a difference of \$2355.75. The attorney has filed an appeal requesting that the Commission reevaluate his requested attorney's fees and approve an additional \$2112.75. The file does not contain a response from the claimant.

DECISION

The Order For Attorney's Fees is affirmed in part and reversed and rendered in part.

The Appeal Panel reviews an order for attorney's fees under an abuse of discretion standard. Texas Workers' Compensation Commission Appeal No. 012261, decided November 13, 2001. Section 408.221 and Rules 152.1 *et seq.* contain the statutory and rule provisions governing attorney's fees. With respect to the requested attorney's fees related to the benefit review conference (BRC), the Order reflects that the BRC was held on January 2, 2002; that the attorney requested fees for 6.40 hours (at the rate of \$135.00 per hour) for services related to the BRC; that 2.55 hours were approved; and that the remainder of the hours requested were disapproved for the stated reason that they exceeded the Guidelines and/or were unreasonable. In his appeal, the attorney concedes that the 2.3 hours requested for services on January 29, 2002, should have been listed under the request for fees related to the CCH. The attorney further states that he attended the BRC for 2.3 hours. However, the Order approved only .75 hours for attending the BRC. The Guidelines authorize "actual time" attending the BRC plus two hours. We have no basis in the record to question the attorney's assertion that he attended the BRC for 2.3 hours. Accordingly, we reverse so much of the Order as approves 2.55 hours for services related to the BRC and render a new order that 2.3 hours plus 2 hours are approved.

With respect to the requested attorney's fees related to the CCH, the attorney requested approval of 15.30 hours and the Order approved 4.00 hours. The Order reflected that 11.30 hours were disapproved for the reason that they exceeded the Guidelines and/or were unreasonable. The Order's entries related to the CCH reflect that no hours were requested for attendance at the CCH. The appeal states that the attorney's "staff" failed to make a separate entry for the time he spent in attendance at the CCH. The Guidelines authorize "actual time" attending the CCH plus 4 hours. The log note states that the CCH was held on February 21, 2002, that 2.1 hours were spent in the hearing, and that the time spent attending the CCH "was not listed on the attorney fee application on the computer." Accordingly, we reverse so much of the Order as approves 4.00 hours for attorney's services relating to the CCH and render a new order that 2.1 hours plus 4 hours are approved.

In that the attorney apparently failed to provide the hearing officer with justification for time he spent which exceeded the times in the Guidelines, the remainder of the Order is affirmed.

The true corporate name of the insurance carrier is **AMERICAN RISK FUNDING INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**BRAD PORTER
12222 MERIT DRIVE, SUITE 1660
DALLAS, TEXAS 75251.**

Philip F. O'Neill
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Thomas A. Knapp
Appeals Judge